



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7861482

Date: MAR. 12, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an acrobatic performer, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.¹

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

¹ We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The record reflects that the Petitioner received O-1 nonimmigrant classification in 2018 and has been employed as an acrobatic performer in the [redacted] show [redacted] at the [redacted] [redacted]. Between 2016 and 2018, the Petitioner worked as a [redacted] gymnastics coach in England and was employed in J-1 nonimmigrant status as the department head of gymnastics and fitness at a summer camp in Pennsylvania. The Petitioner completed his Bachelor of Science degree at [redacted] University in England with a concentration in Sport Coaching. He also earned a professional qualification certificate in sport and exercise sciences.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i) -(x). On appeal, the Petitioner asserts that he meets the criteria related to lesser nationally or internationally recognized awards, memberships in associations requiring outstanding achievements, published materials about him and his work in the field, leading or critical roles in organizations or establishments with distinguished reputations, and high salary or other remuneration. After reviewing all of the evidence in the record, we find that the Petitioner has not established that he meets at least three of the initial evidentiary criteria.

Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Director found that the Petitioner did not satisfy this criterion. However, we find sufficient documentary evidence to establish that the Petitioner received nationally and internationally recognized awards from [redacted] gymnastics events at the junior level, and the Director's determination on this issue will be withdrawn. For example, the Petitioner provided documentation showing that he received a bronze medal at the 2013 [redacted] Championship, a gold medal at the 2015 [redacted] Championship, and a silver medal at the 2016 [redacted] Gymnastics [redacted] Competition (2016 [redacted]).

In light of the above, the Petitioner has established that he meets this criterion.

Documentation of the individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner claims that he meets this criterion based on his professional membership with the International Gymnastics Federation (FIG), and as a member of the Great Britain [REDACTED] Gymnastics national team. In order to satisfy this criterion, the Petitioner must show that he is a member of an association, and that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.²

With respect to the Petitioner's FIG membership, the Petitioner provided evidence establishing that he has been a member of FIG since [REDACTED] 2015. His FIG membership card indicates that this membership category is for those participating in FIG-sanctioned events as a competitive gymnast. The Petitioner asserts that in becoming a member of the Great Britain National team "my ability was assessed by a committee in order to represent Great Britain and allow access to FIG." As acknowledged by the Petitioner, however, a governing body of the sport such as FIG "is a separate entity" than the Great Britain National Team. The Petitioner has not provided evidence (such as bylaws or rules of admission) showing that FIG requires outstanding achievements of its members, as judged by recognized national or international experts in the Petitioner's field or an allied one.

However, we find sufficient evidence to establish that the Petitioner demonstrated membership with the Great Britain national team, and that this evidence meets the membership criterion, and the Director's determination on this issue will be withdrawn. The Petitioner provided the aforementioned letter from [REDACTED] of British Gymnastics. [REDACTED]'s CV indicates that he is the head coach of the senior and junior squads of the Great Britain [REDACTED] gymnastics national team. He confirms that the Petitioner was a member of the national team between 2014 and 2016, and states as follows:

I witnessed him achieving a gold medal at the 2015 [REDACTED] Championships. I was part of the selection panel that chose him to represent Great Britain at the 2015 [REDACTED] Championships in [REDACTED] Germany and at the 2016 [REDACTED] Championships in [REDACTED] China where I saw him win a silver world medal.

The Petitioner meets this criterion based on his selection for Great Britain's national team by the national governing body in his sport, which can be considered a recognized national expert in the discipline.

² See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

Published material about the individual in professional or major trade publications or other major media, relating to the individual's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The Director determined that the Petitioner did not meet this criterion. The Petitioner submitted several articles in support of this criterion. One article, titled [REDACTED] [REDACTED]” was published by the website *The Northern Echo* in 2016. The submitted article is not about the Petitioner; it was written about the 2016 [REDACTED] gymnastics which was to be held in China shortly after the publication of the article. The article states that a four-man team which includes the Petitioner would be competing and mentions some of their recent competition results, but the Petitioner is not otherwise mentioned in the article. The article also indicates that the head of gymnastics from the [REDACTED] Gymnastics Academy would be one of the team coaches and quotes him about the team's hard work at that academy. Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). In addition, the Petitioner has not provided sufficient evidence to establish that this publication, described as a “regional daily” newspaper is a professional publication, major trade publication or other major media in England. The Petitioner submitted a screenshot from the newspaper's website which states that it has a circulation of 44,062 copies but did not provide evidence showing how this circulation compares to other English publications.³

The Petitioner also submitted a 2015 article titled [REDACTED] published by the website *Sunderland Echo*. As with the previous article, this article is not about the Petitioner; it was written about the 2015 [REDACTED] Championships which were to be held in Germany shortly after the article's publication. The article states that six gymnasts from the [REDACTED] Gymnastics Academy, including the Petitioner, will be competing and identifies the participating countries, but the Petitioner is not otherwise mentioned in the article. Further, we note that the author of the article is not identified, and the article is not accompanied by sufficient evidence that *Sunderland Echo* qualifies a professional publication, major trade publication, or other major media in England.

We also note that the Petitioner submitted several articles about him and his work. The article titled [REDACTED] was written about the Petitioner's anticipated participation in the 2016 [REDACTED] and the article titled “[REDACTED]” reported that his team took second place in the competition. However, those articles do not identify their source, author or date. Furthermore, the Petitioner submitted a [REDACTED] 2013 online article titled “[REDACTED] [REDACTED]” published by *Gazette Live* and written about the Petitioner's selection to the Great Britain junior gymnastics squad, but the author of the article is not identified.

Finally, the Petitioner submitted several additional press releases and articles pertaining to the Petitioner's participation in the 2016 [REDACTED], 2015 [REDACTED] Championship, and 2013

³ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

[redacted] Championship, and his receipt of a [redacted] Award in gymnastics, but these articles do not identify the author of the material, as required by the regulations.

For the reasons discussed, the Petitioner has not established that he meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner asserts that he meets this criterion based on his role with his current employer, [redacted], specifically, as a performer in the production [redacted]

On appeal, the Petitioner claims that the reference letter from [redacted] demonstrates that the Petitioner meets this criterion. As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.⁴ Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical. In addition, this criterion requires that the organizations or establishments must be recognized as having a distinguished reputation, which is marked by eminence, distinction, or excellence.⁵

Upon review, the Petitioner has not shown that he performs a leading or critical role for [redacted]. Although the letter from [redacted] the [redacted] gymnastics coach for [redacted] provides that the Petitioner is one of almost 100 performers for that production, the letter does not provide details on whether the Petitioner has had a leading or critical role in [redacted]. [redacted] praises the Petitioner's skills in two acts of the production. We note that his letter does not indicate that the production features the Petitioner's acts more prominently than the other acts. He indicates that the Petitioner performs as a [redacted] whose responsibility is to "ensure the safety of other performers being launched" into the air. He states that the Petitioner displays the "flawless technique, strength, and timing of an experienced [redacted]"

In another act called the [redacted], [redacted] indicates the Petitioner "proved himself as [a] uniquely talented [redacted] and dancer." [redacted] provides that "[f]urther act integration can be expected for [the Petitioner]." He states that the Petitioner's "contributions and character" are "valuable to the ongoing success of our crowd-pleasing production." [redacted]'s letter, however, does not provide specific information on the impact of the Petitioner's performance to [redacted] as a whole, such as but not limited to, specific information on increased revenues resulting from the Petitioner's performance. The letter also does not state that the Petitioner's title and associated duties within [redacted] rank him above those of other performers, or that the Petitioner's impact on [redacted] is more significant than those of other performers. [redacted]'s letter shows that the Petitioner is one of the valued performers in the production [redacted], but does not show that he has a leading or critical role in the [redacted] organization. Similarly, the signed employment offer between the Petitioner and [redacted] does not indicate that the Petitioner has had a role in addition to being one of the performers in [redacted]

⁴ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁵ *Id* at 10-11.

In light of the above, the Petitioner has not submitted sufficient evidence to establish that he meets this criterion.

Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

To establish eligibility under this criterion, the Petitioner must present evidence showing that he has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). The petition was filed in June 2019, and the Petitioner must establish his eligibility as of the date of filing. The supporting evidence does not support the Petitioner's claim.

The Petitioner provided copies of his IRS Forms W-2 indicating that he earned \$3,439 in 2018.⁶ The Petitioner also provided a paystub dated June 21, 2019, showing that the Petitioner was receiving a monthly salary of \$5,000, or \$60,000 per year. The Petitioner provided salary data from Neuvo that indicates that the national average base pay for [REDACTED] is \$36,075, but it also indicates "most experienced workers make up to \$58,500 per year." The Petitioner further submitted data from CareerOneStop, indicating a median salary of \$17.09 per hour or approximately \$34,180 per year for "Entertainers and Performers, Sports and Related Workers, All Others," with those with earnings at the 75th percentile earning approximately \$53,940 and the top 10% earning at least \$85,660. Finally, the Petitioner provided data from www.bls.gov, indicating that the average hourly wage for "Entertainers and Performers, Sports and Related Workers, All Others" is \$39.88 per hour or approximately \$79,760 per year in the Petitioner's geographic area in Nevada. Overall, based on the information provided, the Petitioner has not established that he has commanded a high salary or other significantly high remuneration in relation to others in the field.

C. O-1 Nonimmigrant Status

We note that the record indicates that the Petitioner has previously been granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form 1-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *affd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant

⁶ The record reflects that the Petitioner was granted O-1 status in October 2018 and did not begin working for [REDACTED] until November 29, 2018. As a result, we acknowledge that his 2018 W-2 only reflected less than one full month of earnings.

visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the evidence demonstrates that the Petitioner is highly educated in his field and that his [] gymnastics expertise is valued by the [] gymnastics community in both the United States and Great Britain. However, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.